

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019064535601**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Axiom Capital Management, Inc. (Respondent)
Member Firm
CRD No. 26580

Pursuant to FINRA Rule 9216, Respondent Axiom Capital Management, Inc. submits this Letter of Acceptance, Waiver, and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Axiom has been a FINRA member since September 1990. It conducts a general securities business that includes market-making, underwriting, and private placements. It is headquartered in New York City and has thirty registered representatives in four branches.¹

OVERVIEW

In 2019, Axiom served as a sub-placement agent for a private placement offering by a Canadian start-up company. Axiom conducted due diligence of the company when it was first engaged to serve as sub-placement agent and recognized a lawsuit by the federal government against the company's founder alleging fraud to be a "red flag." While Axiom recognized this red flag, it failed to reasonably conduct ongoing due diligence in connection with the lawsuit during the three-month offering period. Instead, Axiom relied almost exclusively on representations by the company, which minimized the gravity of the lawsuit and its potential effect on the company and its assets. Axiom thus failed to learn of material developments in the lawsuit that later resulted in the company being ordered to place a substantial portion of its assets in receivership and a contempt finding against the company's CEO. As a result of its failure to conduct reasonable ongoing due

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

diligence in connection with the lawsuit, Axiom recommended the offering to customers without a reasonable basis in violation of FINRA Rules 2111(a) and 2010. In addition, Axiom failed to establish and maintain a supervisory system, including written procedures, reasonably designed to ensure that the firm conducted reasonable ongoing due diligence during the entire offering period in violation of FINRA Rules 3110 and 2010. Axiom also failed to timely file the offering documents with FINRA in violation of FINRA Rules 5123 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a referral by FINRA's Corporate Financing Department.

Member Firms Must Conduct Reasonable Due Diligence of a Private Placement

FINRA Rule 2111(a) requires firms to have a reasonable basis to believe that a recommended securities transaction is suitable for the customer. FINRA Rule 2111 Supplementary Material .05 (Rule 2111.05) includes a reasonable-basis suitability obligation that "requires a member . . . to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors. . . . A member's . . . reasonable diligence must provide the member . . . with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule."

FINRA Regulatory Notice 10-22 reminds member firms of "their obligation to conduct a reasonable investigation of the issuer and the securities they recommend" in offerings made under Regulation D (*i.e.*, private placements). Regulatory Notice 10-22 explains that a firm's obligation to conduct reasonable diligence in the sale of private placements includes the obligation to "follow up on any red flags that it encounters during its inquiry as well as to investigate any substantial adverse information about the issuer." Notice 10-22 further explains that, when presented with a red flag, the firm "must do more than simply rely upon representations by issuer's management." Because a firm must have a reasonable basis to believe that each recommendation it makes is suitable, a firm's obligation to conduct ongoing reasonable diligence and investigate any red flags continues throughout the entire offering period.

FINRA Rule 3110(a) requires firms to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. FINRA Rule 3110(b) requires firms to establish, maintain, and enforce written supervisory procedures to supervise the types of business in which they engage and the activities of their associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules. Regulatory Notice 10-22 reminds members that, when selling private placements, they must have supervisory procedures that are reasonably designed to ensure that firm personnel, among other things, "engage in an inquiry that is sufficiently rigorous to comply with their legal and regulatory requirements" and perform the suitability analysis required by Rule 2111.

Violations of FINRA Rules 2111 and 3110 also constitute violations of FINRA Rule 2010, which requires member firms in the conduct of their business to observe high standards of commercial honor and just and equitable principles of trade.

Axiom Failed to Conduct Reasonable Ongoing Due Diligence

Axiom served as sub-placement agent for a private offering of debenture units issued by True Pharmastrip, Inc. (TPI), a Canadian start-up company that planned to develop and distribute cannabis-infused oral film strips in the U.S and Canada. Axiom was engaged to serve as sub-placement agent in April 2019 by the offering's lead placement agent.²

Before selling any of the units, Axiom conducted due diligence on TPI. Axiom learned that the United States Federal Trade Commission (FTC) had sued TPI's founder, Jason Cardiff, in October 2018 for fraud in connection with a different company that he had founded earlier that also sold oral film strips. Axiom also learned that the FTC had obtained a court order freezing Cardiff's assets as well as the assets of any companies he owned or controlled. As a result of the FTC's lawsuit, Cardiff resigned his role as director of TPI and divested his ownership interest in the company by April 2019. Cardiff, however, continued to play an active role at TPI as a "consultant" to the company. Cardiff was heavily involved in TPI's private placement offering, serving as a primary contact and source of information for the placement agents and prospective investors.

At the start of the offering's selling period, Axiom recognized the FTC's lawsuit against Cardiff to be a red flag given his role at the company. Axiom discussed its concerns with the lead placement agent. After selling began, the FTC sought to freeze all of TPI's assets and to hold TPI's CEO in contempt for funneling TPI's assets to Cardiff for his personal use. Axiom was unaware of these developments during the three-month offering period because it unreasonably relied on the issuer—primarily Cardiff (the defendant in the fraud lawsuit) and TPI's CEO—to keep it apprised of developments in the lawsuit. Shortly after the end of the selling period, the court held TPI's CEO in contempt and issued an order requiring TPI to transfer \$1.205 million—a substantial portion of its assets—to a court-appointed receiver. TPI subsequently failed to repay the investors in the offering when the debenture units matured in 2021.

When presented with the FTC's lawsuit against TPI's founder—an acknowledged red flag—Axiom unreasonably relied on the lead placement agent, TPI, and the defendant in the lawsuit to keep it apprised of material developments. In connection with its due diligence, Axiom did not request a written explanation of the FTC lawsuit from TPI, did not take steps to verify Cardiff's or TPI's oral representations regarding the lawsuit, did not review the lawsuit's public docket, did not follow up with additional questions, and

² An issuer of a private placement may engage a placement agent to assist it, for example, in selling the private placement to investors and preparing and distributing offering documents. A placement agent may in turn engage a sub-placement agent to assist it in selling the private placement. TPI engaged a different member firm to serve as lead placement agent for the offering. That member firm voluntarily terminated its FINRA membership in 2021 for unrelated reasons.

took no steps to ensure that the lead placement agent was tracking developments in the lawsuit. By failing to conduct reasonable ongoing due diligence in connection with the FTC lawsuit, an acknowledged red flag, Axiom failed to timely learn of material developments in the FTC lawsuit and thus did not have a reasonable understanding of the potential risks of the offering. As such, Axiom lacked a reasonable basis to continue to recommend the TPI offering to customers in violation of FINRA Rules 2111(a) and 2010.

Axiom's written supervisory procedures at the time required it to conduct due diligence of each private placement offered by the firm and to update its "due diligence as needed until effectiveness of the offering." However, the firm did not establish and implement a formal process for conducting its ongoing due diligence. The firm's written supervisory procedures also required it to review any red flags and not simply rely on representations by the issuer's management. The procedures, though, did not address continued monitoring of identified red flags as part of the firm's ongoing due diligence. By failing to establish and maintain a supervisory system, including written procedures, reasonably designed to ensure that it conducted reasonable ongoing due diligence during the entire offering period, Axiom violated FINRA Rules 3110 and 2010.

Axiom Failed to Timely File the TPI Offering Documents with FINRA

FINRA Rule 5123(a) requires each member that sells a private placement to either "(i) submit to FINRA or have submitted on its behalf by a designated member, a copy of any private placement memorandum, term sheet or other offering document . . . used in connection with such sale within 15 calendar days of the date of first sale, or (ii) notify FINRA that no such offering documents . . . were used." FINRA Regulatory Notice 12-40 explains that Rule 5123 was implemented to "enhance oversight and investor protection" and provide FINRA with "more timely and complete information about the private placement activities of firms on behalf of other issuers." Under FINRA guidance, each firm that sells a private placement has a responsibility to ensure that the offering documents are filed with FINRA; while a firm can designate another firm to make the filing, if the designated firm fails to do so, none of the selling firms will have complied with Rule 5123.³ A violation of FINRA Rule 5123 is also a violation of FINRA Rule 2010.

Axiom's first sale of the TPI offering was on May 8, 2019. However, neither Axiom nor the lead placement agent filed the TPI offering documents with FINRA until September 19, 2019. That filing was almost four months late. Axiom did not take any steps to ensure or confirm that the lead placement agent timely submitted the offering materials to FINRA on Axiom's behalf. The late filing took place after all the sales were closed. FINRA therefore was unable to review and make a timely determination regarding compliance with FINRA rules, such as due diligence obligations. As a result of the foregoing, Axiom violated FINRA Rules 5123 and 2010.

³ See Frequently Asked Questions (FAQ) about Private Placements, *available at* <https://www.finra.org/rules-guidance/guidance/faqs/private-placement-frequently-asked-questions-faq#3-4>.

B. Respondent also consents to the imposition of the following sanctions:

- a censure;
- a \$40,000 fine; and
- disgorgement of \$7,000 plus interest as described below.

Respondent agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanctions imposed in this matter.

Disgorgement of certain sub-placement agent fees paid to, and retained by, Axiom in connection with the TPI offering is ordered to be paid to FINRA in the amount of \$7,000, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621 from the investments' respective closing dates until the date this AWC is accepted by the National Adjudicatory Council (NAC).

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a complaint issued specifying the allegations against it;
- B. To be notified of the complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made, and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such

person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
 - 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this statement. This statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

July 14, 2022
Date


Axiom Capital Management, Inc.
Respondent

Print Name: Liam F. Dalton

Title: CEO

Reviewed by:


Jessica E. Levine, Esq.
Counsel for Respondent
Winget, Spadafora & Schwartzberg, LLP
45 Broadway
32nd Floor
New York, NY 10006

Accepted by FINRA:

08/15/2022

Date

Signed on behalf of the
Director of ODA, by delegated authority



Jeffrey E. Baldwin
Senior Counsel
FINRA
Department of Enforcement
1601 Market Street
Suite 2700
Philadelphia, PA 19103